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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/801,356	03/16/2004	Johan Loccufier	27500-202	2124
7590 Joseph T. Guy Ph.D. Nexsen Pruet Jacobs & Pollard LLP 201 W. McBee Avenue Greenville, SC 29603			EXAMINER SHEWAREGED, BETTELHEIM	
			ART UNIT 1794	PAPER NUMBER
			MAIL DATE 04/28/2009	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/801,356

Applicant(s)

LOCCUFIER ET AL.

Examiner

Betelhem Shewareged

Art Unit

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 January 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 and 27-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 27-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. Applicant's response filed on 01/30/2009 has been fully considered. Claims 8-26 and 32-43 are canceled, and claims 1-7 and 27-31 are pending.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sumioka et al. (US 2003/0072923 A1) in view of Omatsu et al. (EP 1 251 154 A1).
4. Claim 1: Sumioka teaches an ink jet recording material comprising a support and an ink receptive layer on the support (abstract). The ink receptive layer comprises additives [0059]. Sumioka does not teach the claimed non-polymeric compound recited in current claim 1 as the additive. However, Omatsu teaches an ink jet ink composition comprising a compound of formula I (abstract), and a suitable example of formula I includes compounds (I-73) (page 32) and (I-82 and 84) (page 33). Sumioka and Omatsu are analogous art because they are from the same field of endeavor that is the ink jet recording medium art. At the time of the invention it would have been obvious to a person of ordinary skill in the art to combine compounds (I-73), (I-82) or (I-84) of the ink composition of Omatsu with the invention of Sumioka, and the motivation would be, as Omatsu suggests, improving image fastness of the dye [0010]. Thus, adding

compounds (I-73), (I-82) or (I-84) in the ink receptive layer of Sumioka yields predictable result such as improved image fastness. (See MPEP 2141(I))

The Supreme Court in KSR reaffirmed the familiar framework for determining obviousness as set forth in *Graham v. John Deere Co.* (383 U.S. 1, 148 USPQ 459 (1966)), but stated that the Federal Circuit had erred by applying the teaching-suggestion-motivation (TSM) test in an overly rigid and formalistic way. KSR, 550 U.S. at ___, 82 USPQ2d at 1391. Specifically, the Supreme Court stated that the Federal Circuit had erred in four ways: (1) "by holding that courts and patent examiners should look only to the problem the patentee was trying to solve" (Id. at ___, 82 USPQ2d at 1397); (2) by assuming "that a person of ordinary skill attempting to solve a problem will be led only to those elements of prior art designed to solve the same problem" (Id.); (3) by concluding "that a patent claim cannot be proved obvious merely by showing that the combination of elements was obvious to try" (Id.); and (4) by overemphasizing "the risk of courts and patent examiners falling prey to hindsight bias" and as a result applying "[r]igid preventative rules that deny factfinders recourse to common sense" (Id.). In KSR, the Supreme Court particularly emphasized "the need for caution in granting a patent based on the combination of elements found in the prior art," Id. at ___, 82 USPQ2d at 1395, and discussed circumstances in which a patent might be determined to be obvious. Importantly, the Supreme Court reaffirmed principles based on its precedent that "[t]he combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results." Id. at ___, 82 USPQ2d at 1395. The Supreme Court stated that there are "[t]hree cases decided after *Graham* [that] illustrate this doctrine." Id. at ___, 82 USPQ2d at 1395. (1) "In *United States v. Adams*, . . . [t]he Court recognized that when a patent claims a structure already known in the prior art that is altered by the mere substitution of one element for another known in the field, the combination must do more than yield a predictable result." Id. at ___, 82 USPQ2d at 1395. (2) "In *Anderson's-Black Rock, Inc. v. Pavement Salvage Co.*, . . . [t]he two [pre-existing elements] in combination did no more than they would in separate, sequential operation." Id. at ___, 82 USPQ2d at 1395. (3) "[I]n *Sakraida v. AG Pro, Inc.*, the Court derived . . . the conclusion that when a patent simply arranges old elements with each performing the same function it had been known to perform and yields no more than one would expect from such an arrangement, the combination is obvious." Id. at ___, 82 USPQ2d at 1395-96 (Internal quotations omitted.). The principles underlining these cases are instructive when the question is whether a patent application claiming the combination of elements of prior art would have been obvious. The Supreme Court further stated that:

When a work is available in one field of endeavor, design incentives and other market forces can prompt variations of it, either in the same field or a different one. If a person of ordinary skill can implement a predictable variation, § 103 likely bars its patentability. For the same reason, if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill. Id. at ___, 82 USPQ2d at 1396.

When considering obviousness of a combination of known elements, the operative question is thus "whether the improvement is more than the predictable use of prior art elements according to their established functions." Id. at ___, 82 USPQ2d at 1396.

5. Claims 2-4: Sumioka teaches the ink receptive layer further comprises inorganic particles such as silica, alumina and alumina hydrate [0017].
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When considering obviousness of a combination of known elements, the operative question is thus "whether the improvement is more than the predictable use of prior art elements according to their established functions." Id. at ___, 82 USPQ2d at 1396.

17. Claims 27-29: Sumioka teaches the ink receptive layer further comprises inorganic particles such as silica, alumina and alumina hydrate [0017].

18. Claims 30 and 31: Sumioka teaches the ink receptive layer further comprises a binder such as polyvinyl alcohol [0023].

Response to Arguments

19. Applicant's argument is based on that the improvements taught by the reference of Omatsu are concerned with ink jet ink, and they are meaningless when referring to a media. This argument is not persuasive for the following reason. Controlling a color hue is not meaningless to a media because preventing the color hue shift of imaged or inked areas when exposed to humidity is a known requirement when referring to the media. Controlling a shelf life of a recorded image is not meaningless to a media because improving the shelf life of the recorded image is a known requirement when

referring to the media. Controlling a water resistance over time of an image is not meaningless to a media because improving the water resistance over time of the image is a known requirement when referring to the media. Even though each and every improvement does not apply to the media, at least the above improvements apply to the media, and to a person of ordinary skill in the art these improvements would be basis for considering the present combination.

20. Applicant further argued that Compound (I-73) is not within the scope of formula I of current claims 1 and 7. This argument is not persuasive because compounds (I-73), (I-82) and (I-84) are within the scope of formula I of current claims 1 or 7. Compound (I-73) is identical to one of the compounds recited in current claim 7 (see the 12th compound in current claim 7). Compound (I-82) meets formula I of current claim 1, when R⁵ and R⁶ are hydrogen and R⁷ is unsubstituted saturated or unsaturated aliphatic groups. Compound (I-84) meets formula I of current claim 1, when R⁵ is hydrogen, R⁶ is unsubstituted saturated or unsaturated aliphatic groups and R⁷ is saturated or unsaturated aliphatic groups substituted with heteroatoms.

21. Applicant's argument is based on that one of skill in the art would have no motivation to improve the acoustic loss value of an ink receptive material because acoustic loss is a property of the ink within the print head. Light-fastness, water-fastness and feathering are also properties of the ink. This argument is not persuasive for the following reason. In the rejection above the Examiner did not use acoustic loss value as the motivation for combining the references. Excellent light fastness and water resistance of printed portions are known requirements when referring to a media.

Preventing or reducing feathering of image after printing is a known requirement when referring to a media. Therefore, to a person of ordinary skill in the art improving light fastness, water resistance and feathering are basis for considering the present combination.

22. For the above reasons claims 1-7 and 27-31 stand rejected.

Conclusion

23. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

24. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

25. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Betelhem Shewareged whose telephone number is (571)272-1529. The examiner can normally be reached on Monday-Friday 7am-4:30pm.

26. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Bernatz, acting SPE for Carol Chaney can be reached on 571-272-1505. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

27. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

BS
April 26, 2009.

/Betelhem Shewareged/
Primary Examiner, Art Unit 1794.